

## LENS GLASS FOR LIGHT-HOUSES.

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### LETTER

FROM

## THE ACTING SECRETARY OF THE TREASURY,

RECOMMENDING

### LEGISLATION TO ALLOW LENS GLASS FOR USE OF LIGHT-HOUSES TO BE IMPORTED FREE OF DUTY.

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FEBRUARY 1, 1902.—Réferred to the Committee on Ways and Means and ordered to be printed.

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TREASURY DEPARTMENT, OFFICE OF THE SECRETARY,  
*Washington, January 30, 1902.*

SIR: It is provided in the tariff act of 1890, paragraph 122, that duties shall be collected on \* \* \* "lenses of glass or pebble wholly or partially manufactured and not specially provided for in this act \* \* \* 45 per cent ad valorem."

By the act of March 3, 1893 (27 Stat. L., p. 575), sundry civil appropriations, under the heading of "Supplies of light-houses," it is provided "that lenses and lens glass for the use of the Light-House Establishment may be imported free of duty."

Under that provision light-house illuminating apparatus known as lenses and lens glass, for the use of the Light House Establishment, were, until quite lately, imported free of duty.

On June 21, 1901, the Comptroller of the Treasury, in a letter to Lieut. Col. D. P. Heap, U. S. A., then engineer of the Third light-house district, a copy of which is inclosed, decided that the paragraph above quoted from the act of March 3, 1893, was "limited in its application to the particular fiscal year for which the appropriation is made merely because the provision is in the form of a proviso."

Lenses and lens glass for the use of the Light-House Establishment had been imported free of duty from the time of the passage of the act containing that proviso—namely, March 3, 1893, up to June 21, 1901—without any objection by any accounting officer. Still the Comptroller held:

\* \* \* That the word "hereafter" when used in the proviso in such an act indicates an intention to extend the application of the proviso to future appropriations. The absence of this word or other words indicating futurity from this proviso is to be observed. \* \* \*

I am therefore of the opinion that neither the language nor the nature of this proviso indicated an intention to enact general and permanent legislation, and that it must be construed to be limited in its operations to the particular appropriation of which it forms a part.

Since this decision duties, sometimes at the rate of 45 per cent and sometimes at the rate of 60 per cent, have been collected on lenses and lens glasses, being illuminating apparatus intended for light-house use.

The estimates made by the Light-House Board, and now before Congress, for the establishment of many light stations were based upon the theory that lenses and lens glass for the use of the Light-House Establishment would be imported free of duty. These lenses cost, according to their size and character, from \$540 to \$6,328 each. The addition of 45 per cent, and in many cases 60 per cent, duties to the original cost will in each case bring the amount to be paid from the appropriation for the establishment of each light-house that much beyond the estimate for the establishment of the light which is now before Congress. From this it will be seen that not one of these lights can be established for the amount which it has been estimated the light would cost.

In view of this decision of the Comptroller this Department, at the instance of the Light-House Board, has the honor to recommend that the proviso in the act of March 3, 1897 (27 Stat. L., p. 575), be modified, reenacted, and made part of the next sundry civil appropriation act in that part relating to repairs, etc., of light-houses, so that it will stand as follows:

That lenses and lens glass constituting, in whole or in part, illuminating apparatus for the use of the Light-House Establishment, may be imported hereafter free of duty.

Respectfully,

O. L. SPAULDING,  
*Acting Secretary.*

THE SPEAKER OF THE HOUSE OF REPRESENTATIVES.

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TREASURY DEPARTMENT,  
OFFICE OF COMPTROLLER OF THE TREASURY,  
*Washington, June 21, 1901.*

SIR: In your communication of the 14th instant you request my decision of a question which you present as follows:

I ordered some lens prisms from France. Under the law these prisms are entitled to free entry. They were brought to New York by the American Express Company, who paid \$11.95 duty, being ignorant of the law. I was not notified of the arrival of the prisms until after duty had been paid, so could not therefore ask for free entry.

I wrote to the Light-House Board, asking that duty paid be refunded to the American Express Company. This request was denied by the Assistant Secretary of the Treasury (see copy of letter inclosed). I now request to be advised if I can reimburse the American Express Company for duty paid under misapprehension—this reimbursement to be charged against the appropriation from which the cost of the prisms was paid.

The copy of the letter of the Assistant Secretary of the Treasury transmitted by you is as follows:

The Department is in receipt of your letter of the 2d instant renewing your application for refund of duties paid at New York on certain illuminating apparatus imported through the American Express Company on the 21st of January last, per

S. S. *Aquitaine*, entry No. 23365. You now state that as such illuminating apparatus consisted of certain lens prisms for the Light-House Service, the same are free of duty under the act of March 3, 1893 (27 Stat. L., p. 575), which provides that lenses and lens glass for the use of the Light-House Establishment may be imported free of duty.

In reply I have to state that, while the articles were entitled to free entry under said provision of law, there is no provision of law under which refund of the duties paid as aforesaid could be made in the absence of a timely written notice of dissatisfaction to the collector of customs at New York, under the provisions of section 14 of the act of June 10, 1890.

Your application is therefore again denied.

If the lens prisms to which you refer were not subject to duty, the express company having paid, it is understood, without protest, the duties exacted, there is no authority of law, as stated by the Assistant Secretary of the Treasury, for their refundment.

Upon this supposition you now ask substantially if you are authorized to reimburse the express company as for an expense properly incurred in behalf of the United States. But, if the lens prisms were not subject to duty, it can not be said that the expense was properly incurred, such payment not having been required by law. And there is some doubt whether reimbursement of the express company for the amount so paid would not be equivalent to a refundment of the duty, which, under the circumstances of the case, is unauthorized by law. If the duties were not illegally exacted this would not be true.

There is a doubt, however, whether these duties were illegally exacted. The provision for admitting such articles free of duty, to which reference is made, is contained in a proviso to the appropriation for supplies of light-houses for the fiscal year 1894, which is in the following terms:

*Provided*, That lenses and lens glass for the use of the Light-House Establishment may be imported free of duty.

This proviso is attached to an annual appropriation, and the question arises whether it is restricted to supplies purchased thereunder or is permanent legislation. In considering the effect of a proviso, in 4 Comp. Dec., 85, it was said:

The general office of a proviso is to except something from the enacting clause, to restrain its generality, or to take special cases out of the general enactment. (*Minis v. United States*, 15 Peters, 423; *Wyman v. Southard*, 10 Wheat., 1-30.) It is limited in its operation to the enacting clause, in connection with which it is used, or to which it specifically refers, and does not except things from the provision of a clause to which it does not relate.

But the practice of Congress to insert general and permanent legislation in annual appropriation acts in the form of a proviso has become so extensive that it is frequently difficult to determine whether a particular proviso in such an act is intended to apply only to the appropriation for the fiscal year for which it is attached, or is intended to be permanent legislation and apply to future appropriations for the same object. In view of this practice it would not be permissible to presume that a proviso in such an act is limited in its application to the particular fiscal year for which the appropriation is made, merely because the provision is in the form of a proviso. In general, I think, a proviso in such an act, which is itself limited in its duration, should not be construed as permanent legislation unless the language used in the proviso or the nature of the provision renders it clear that such was the intention of Congress.

Usually the word "hereafter," when used in a proviso in such an act, indicates an intention to extend the application of the proviso to

future appropriations. The absence of this word and of other words indicating futurity from the language of this proviso is to be observed. Where, however, the provision is in its nature general and bears no particular relation to the object of the appropriation to which the proviso is attached, it may clearly indicate an intention of general and permanent legislation. For example, if this proviso had excepted from duty all articles imported for the use of the Government, I think I should infer that such a provision was intended to be general and permanent legislation, although included in a particular annual appropriation, and although it did not use the word "hereafter." But the provision under consideration is limited to a few articles pertaining to the branch of the service for which the particular appropriation to which the proviso is attached was made.

I am therefore of the opinion that neither the language nor the nature of this proviso indicates an intention to enact general and permanent legislation, and that it must be construed to be limited in its operation to the particular appropriation of which it forms a part.

Adopting this construction, it follows that the duties were legally exacted, and you are therefore authorized to reimburse the express company for the amount thereof paid by it to the Government.

Respectfully,

R. J. TRACEWELL, *Comptroller.*

Lieut. Col. D. P. HEAP, U. S. A.,

*Engineer of the Third Light-House District,  
Tompkinsville, N. Y.*

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